

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-381-A

IN RE:

Office of Regulatory Staff's Petition for
 an Order Requiring Utilities to Report
 the Impact of the Tax Cuts and Jobs Act

) **SUPPLEMENTAL ARGUMENT IN**
) **SUPPORT OF PETITION TO INTERVENE,**
) **PETITION FOR REHEARING OR**
) **RECONSIDERATION, AND RESCISSION**
) **OF ORDER NO. 2018-252**

Petitioners Landtech, LLC ("Landtech") and Lake Carolina Development, Inc. ("Lake Carolina Development") (together "Petitioners"), pursuant to S.C. Code Ann. Section 58-5-320 and other applicable law, provide the following for consideration by the Commission, with respect to Commission Order 2018-252 granting certain relief to Palmetto Utilities, Inc. ("PUI") and Palmetto Wastewater Reclamation, LLC ("PWR") (the "Companies"). As set out herein and previously, Order No. 2018-252 was issued without notice to Petitioners and is therefore not a lawful order of this Commission.

1. The Companies' Motions (filed in this Docket) sought *affirmative relief* not anticipated by the scope of this Docket and asked the Commission approve a change to their "approved rate schedules." Motion at Paragraph 7, to include the following "tax multiplier."

TAX MULTIPLIER

Except as otherwise provided by contract approved by the South Carolina Public Service Commission, amounts paid or transferred to the Utility by customers, builders, developers or others, either in the form of cash or property, shall be increased by a cash payment in an amount equal to the income taxes owed on the cash or property transferred to the Utility by customers, builders, developers or others and properly classified as a contribution or advance in aid of construction in accordance with the Uniform System of Accounts. Included in this classification are sewer service connection charges and plant impact fees. The amount of the required cash payment shall be \$33.24 for each \$100 in contribution or advance in aid of construction, which is based upon the total effective Federal and South Carolina corporate income tax rate.⁴ This amount may be changed to reflect any changes in either corporate income tax rate.

2. The “tax multiplier” applies specifically to “sewer connection charges and plant impact fees.”

3. Accordingly, the Companies’ rate schedule approved in Docket 2017-228-S by Order No. 2018-155 (at Page 33 thereof) (and following public notice and a hearing) specifically included non-recurring charges for a “sewer service connection charge” and a “plant impact fee”:

2. NONRECURRING CHARGES

- a. Sewer service connection charge per single-family equivalent \$250.00
- b. Plant Impact fee per single-family equivalent \$800.00
- c. The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating is less than one (1). If the equivalency rating is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the sewer system is requested.

4. And even though 1) these charges have been previously approved by the Commission; 2) these charges are contained in the Companies’ rate schedule; 3) the Petitioners

have paid and will pay these charges in the future; and 4) the Companies came to this Commission for approval to make changes in their rate schedules and pursuant to S.C. Code Ann. §58-5-240(G) (“Filing schedules of proposed rates and the like; effective date”) and 10 S.C. Code Regs. 103-503 (2012) (“Authorization for Rates and Charges”) *for these very charges*, the Companies now claim that Petitioners “have no interest cognizable in the instant docket as they are not customers of [Companies] and will not be affected by the outcome of this proceeding ...” Objection at Paragraph 1.

5. Similarly, even though the Companies are well aware that Petitioners pay substantial CIAC to the Companies, and even though the Companies and Petitioners have been discussing these very charges and the effect of the Tax Act for several months, the Companies filed this Motion with no notice to the Petitioners or any of those “future customers, developers and others who *make* the contributions in aid of construction” Motion at Paragraph 6.

6. The Motion was not noticed to the public via newspaper publication or by any other method.

7. The Commission Staff never issued a Notice of Filing pursuant to 10 S.C. Code Ann. Regs. 103-804(J) in connection with this Docket or in particular with respect to the Motion.

8. The Companies filed the Motion on March 27, 2018, and the Commission granted the Motion on April 4, 2018, nine days after its filing. As a result, the Commission ruled on the Motion before the 10-day period specified by 10 S.C. Code Ann. Regs. 103-829 for responses had run.

9. As such, the Motion did not give proper notice to those to whom it purported to bind, and did not provide the time mandated by Commission Rule for any party in this Docket to respond.

10. Petitioners learned of the existence of the “tax multiplier” only after the Commission had issued Order 2018-252. As shown in the attached letter (**Exhibit A**) sent by PUI and dated April 11, 2018¹:

The Public Service Commission of South Carolina under Docket No. 2017-381-A has approved adding a Tax Multiplier Fee to the base CIAC rates (Connection [tap] fee and Impact fee) and contributed property to adjust for obligations of newly constructed properties. The Tax Multiplier that should be used to increase CIAC payments (cash or donated facilities) based on the Act is **33.24%***.

11. Article I, Section 22 of the South Carolina Constitution provides that “No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard”

12. Neither Petitioners nor any other person putatively bound by Order No. 2018-252 had notice that the Companies intended to charge the tax multiplier, nor any opportunity to be heard.

13. Petitioners have suffered and will suffer substantial prejudice from the lack of notice and the inability to weigh in on a 33.24% increase in the rate they will pay the Companies for connection fees and impact fees. The Petitioners were “completely deprived of an opportunity to be heard.” *Porter v. South Carolina Public Service Commission*, 338 S.C. 164, 171, 525 S.E.2d 866, 869 at n.2 (2000).

¹ This letter was not sent to Petitioners, but to one of their affiliates.

14. Petitioners have taken all reasonable actions to protect their rights, and in fact there is no way they could have become parties within the timeframe advocated by the Companies. Their Petition to Intervene was timely filed, as no Notice of Filing established a deadline to intervene in this Docket. Their Petition for Rehearing or Reconsideration was filed within the timeframe established by S.C. Code Ann. Section 58-5-330, assuming for the sake of argument that Order No. 2018-252 was a lawful order of the Commission.

15. Moreover, the “bind” into which the Companies seek to put Petitioners with respect to the timeframe set out in S.C. Code Ann. Section 58-5-330 is illusory, in view of the fact that Petitioners never had notice or an opportunity to protect their rights.

16. As Petitioners alleged in their Petition for Rehearing or Reconsideration, they are “businesses that will pay more to the Companies as a result of this multiplier” Therefore, the Companies’ reliance on S.C. Code Ann. § 58-5-240(G) to put these rates into effect without a hearing is inappropriate, since this tax multiplier has resulted in a “rate increase” to the Companies.

17. Finally, in addition to the authority the Commission possesses to reconsider a Commission Order on its own Motion², S.C. Code Ann. Section 58-5-320 also gives the Commission the authority to rescind Order No. 2018-252. Of course, because Order No. 2018-252 was issued without notice to those persons it seeks to bind, the Order was never effective and “rescission” would be a matter more of form than of substance.

² See Commission Order 2018-131 DOCKET NO. 2017-370-E - *Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans* issued February 21, 2018 (Commission amending a previous order on its own motion following a Petition for Reconsideration).

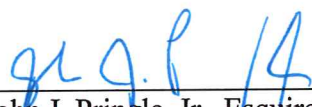
18. If given the opportunity, Petitioners will provide appropriate facts, arguments, and authority in support of their positions regarding the "tax multiplier".

The Petitioners therefore request that the Commission grant the relief sought herein and such other relief as is just and proper.

Respectfully submitted,

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BY:



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May 9, 2018
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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, the **ADDITIONAL FACTS AND ARGUMENT IN SUPPORT OF PETITION TO INTERVENE, PETITION FOR REHEARING OR RECONSIDERATION, AND RESCISSION OF ORDER NO. 2018-252** to the individuals listed below via electronic mail to the e-mail address on file with the Public Service Commission

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Additionally, I have served the below individuals by placing the same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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May 9, 2018
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